



Office of the Attorney General
State of Texas

February 17, 1994

DAN MORALES
ATTORNEY GENERAL

Mr. Burton F. Raiford
Commissioner
Texas Department of Human Services
P.O. Box 149030
Austin, Texas 78714-9030

OR94-079

Dear Commissioner Raiford:

The Department of Human Services has been asked to provide copies of documents made in connection with an internal investigation. You have agreed to release most of the documents requested, a number of which deal with private matters involving the person to whom the records will be released. Open Records Decision No. 481 (1987) (privacy interests are not implicated when a person asks for information about himself). However, you seek to withhold information from certain affidavits under sections 552.101, 552.117, and 552.024 of the Texas Open Records Act, chapter 552 of the Government Code (formerly article 6252-17a, V.T.C.S.).¹ Your request was assigned ID# 23193.

The affidavits in question were made by several employees in connection with the internal investigation. Each affidavit contains the employee's home address and home telephone number. One affidavit contains intimate facts about the employee and the employee's family.

Section 552.101 excepts information from required public disclosure "if it is information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section allows information to be withheld under common-law privacy if it is highly intimate or embarrassing and if it is of no legitimate concern to the public. *Industrial Foundation of the South v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). We have determined that the information sought to be withheld in the affidavit discloses highly intimate facts about the employee's family and personal life, which would be of no legitimate concern to the public. This

¹We note that the Seventy-third Legislature repealed V.T.C.S. article 6252-17a. Acts 1993, 73d Leg., ch. 268, § 46. The Open Records Act is now codified in the Government Code at chapter 552. *Id.* § 1. The codification of the Open Records Act in the Government Code is a nonsubstantive revision. *Id.* § 47.

particular information therefore falls within the common-law privacy exception of section 552.101. Open Records Decision Nos. 562 (1990) at 9; 539 (1990) at 5.

You also seek to withhold the home addresses and telephone numbers of each employee who has opted not to disclose that information, as provided under sections 552.117 and 552.024 of the Government Code. These sections protect from public access the home addresses and telephone numbers of governmental employees who have chosen to keep this information private. Section 552.024 provides that state employees who do not want home addresses and telephone numbers to be publicly accessible must take that option within 14 days after starting or ending employment with the state. After 14 days, an employee wanting to open or close access must so request in writing. If an election is not made, the information is subject to public access. You may withhold the home addresses and home telephone numbers of those employees who, as of the time of the request for the information, had elected to keep the information private. Open Records Decision Nos. 530 (1989) at 5; 482 (1987) at 4; 455 (1987).

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact our office.

Yours very truly,



Ruth H. Soucy
Assistant Attorney General
Open Government Section

RHS/rho

Ref.: ID# 23193

Enclosures: Marked documents

cc: Mr. Joe Flores Jr.
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(w/o enclosures)